



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2012-0033]

Notice of Intent to Grant a Buy America Waiver to the Illinois Department of Transportation for the Use of Sure Close Self-Closing Force Adjustable Gate Hinges

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the Illinois Department of Transportation (IDOT) a waiver from FRA's Buy America requirement for the use of 350 Sure Close gate hinges, which are manufactured in Italy. Self-closing, force adjustable gate hinges are one component of the larger construction project to install pedestrian swing gates in connection with the Chicago-St. Louis High Speed Rail (HSR) corridor project. The Chicago-St. Louis HSR project is funded by a \$1.33 billion grant from FRA. The value of the 350 hinges is approximately \$110,000.

DATES: Written comments on FRA's determination to grant IDOT's Buy America waiver request should be provided to the FRA on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA-2012-0033. All electronic submissions must be made to the U.S. Government electronic site at

<http://www.regulations.gov>. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Railroad Administration” and include docket number FRA-2012-0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590, (202) 493-0078, John.Johnson@dot.gov.

SUPPLEMENTARY INFORMATION:

The letter granting IDOT's request is quoted below:

Joseph E. Shacter
Director of Public and Intermodal Transportation
Illinois Department of Transportation
Division of Public and Intermodal Transportation
100 West Randolph Street
Suite 6-600
Chicago, IL 60601

Re: Request for Waiver of Buy America Requirement for Sure Close Gate Hinges

Dear Mr. Shacter:

This letter is in response to your request dated September 25, 2014, that the Federal Railroad Administration (FRA) grant the Illinois Department of Transportation (IDOT), a waiver from FRA's Buy America provision, at 49 U.S.C. § 24405(a)(1), for one component of the pedestrian swing gates. Your waiver request is for 350 of 600 Sure Close gate hinges by D&D Technology needed for the project. Because the hinges are manufactured in Italy, IDOT would need a waiver from FRA's Buy America requirement. The FRA is granting IDOT's request for these initial 350 Sure Close gate hinges.

The request is based on the Buy America provision (49 U.S.C. § 24405(a)) applicable to FRA's High-Speed Intercity Passenger Rail (HSIPR) Program \$1.33 billion grant for the Chicago-St. Louis High Speed Rail (HSR) corridor. FRA's Buy America requirement for the manufactured goods used in rail infrastructure projects requires domestic manufacturing of the end product and that all of the components be manufactured in the United States. In this case, FRA determined the swing gate system to be an end product while the gate hinge is a component. The swing gate and all other components are manufactured in the United States. Section 24405(a)(2) also permits the Secretary (delegated to the FRA Administrator) to waive the Buy America requirements if the Secretary finds that: (A) applying paragraph (1) would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

On December 12, 2013, IDOT submitted an initial Buy America waiver request for the Sure Close hinge to install all 600 of the required hinges along the entire Chicago St Louis HSR corridor. IDOT has made, and continues to make, extensive efforts to procure a domestic gate hinge for the pedestrian crossings. IDOT initially located a U.S. manufactured hinge; however, the Illinois Commerce Commission (ICC) tested the swing gate and found that the closure force was too strong, even when adjusted, and could cause pedestrian injury. IDOT and ICC then found the Sure Close hinge, which is self-closing, force adjustable and manufactured in Italy. It meets the ICC's safety and performance requirements and is the only non-domestic component of the swing gate. The hinges and attachment brackets cost about \$315 each; the total cost for the required 600 hinges is approximately \$190,000.

To determine whether to grant IDOT's initial request, FRA provided notice and an opportunity for comment on its public website. FRA also emailed notice to over 6,000 persons who have signed up for Buy America notices. FRA received twelve comments to the website notice. Almost all of the commenters recommended denying the waiver; however, no commenter identified a supplier for the hinges. FRA also used the services of the National Institute of Standards and Technology's Manufacturing Extension Partnership (NIST-MEP) in order to scout for domestic sources for the hinges. NIST-MEP did not identify any exact matches. An "exact match" would mean a manufacturer already produces the same item immediately suitable for use in the project. NIST-MEP did identify twenty-seven manufacturers that may have the capabilities to produce the gate hinge needed for the project. However, only three of these twenty-seven manufacturers made a similar item that with some modification and testing may have been suitable for use in the project.

IDOT worked with NIST-MEP to contact these three firms. IDOT identified one U.S. manufacturer that stated it had the capability to produce the type of adjustable hinge needed for the gate. IDOT has been working with that manufacturer; however, the manufacturer's efforts on IDOT's behalf have not yet yielded a hinge having the qualities needed for this project. In addition, once functional prototypes are delivered to IDOT, they will still need to be tested in adverse climates, including winter weather. Further delays in delivery could delay testing until winter 2015-16 and useable hinges are necessary to ensure that major segments of the HSR project are completed next year.

To meet this schedule, on September 25, 2014, IDOT updated its initial Buy America request asking that 350 of the required 600 Sure Close

hinges, costing approximately \$110,000, be allowed for use in current and soon-to-be awarded construction contracts. In this letter, IDOT asserts that if the manufacturer “prototype is delivered in time to allow testing this winter, and the testing is successful, IDOT commits to using” the domestically produced hinges for the remaining 250 pedestrian gate installations. If a functional prototype is not available for testing, IDOT may need to install the additional 250 hinges with the Sure Close hinge. IDOT continues to assert that use of a self-closing, force adjustable gate hinge such as the Sure Close Hinge is essential for maintaining safe pedestrian grade crossings and that a similar hinge remains unavailable from a U.S. source.

After receiving the September 25, 2014 updated waiver request from IDOT, FRA again provided notice and an opportunity for comment on its public website, as well as by emailing the Buy America listserv. FRA received two comments. One commenter supported the waiver, while the other commenter did not support the waiver. Once again, no commenter identified a domestic supplier for the hinges.

Based on NIST-MEP’s scouting report, which did not identify a U.S. manufacturer that makes the same item, IDOT’s inability at this time to locate a domestic gate hinge for pedestrian crossings meeting IDOT’s safety and schedule needs, and the fact that the public did not identify a domestic source, FRA finds that gate hinges “produced in the United States are not of a satisfactory quality.” Therefore, FRA grants a waiver under 49 U.S.C. § 24405(a)(2)(B) (goods of a satisfactory quality are not produced in the United States).

Pursuant to 49 U.S.C. § 24405(a)(4), FRA is publishing notice of its decision to grant IDOT’s waiver request in the Federal Register and provide notice of such finding and an opportunity for public comment after which this waiver will become effective. FRA expects IDOT to continue to use its best efforts to work with the proposed domestic manufacturer and procure domestically-produced hinges for the remaining 250 gate installations.

Question about this letter can be directed to, John Johnson, Attorney-Advisor, at john.johnson@dot.gov or (202)493-0078.

Sincerely,

Sarah Feinberg
Acting Administrator

Issued in Washington, DC on February 6, 2015.

Melissa L. Porter,
Chief Counsel.

[FR Doc. 2015-02996 Filed 02/12/2015 at 8:45 am; Publication Date: 02/13/2015]